**TEICHERT CONSTRUCTION**

Established 1887

400 Sunrise Ave., Suite 300
Roseville, CA 95661
(916) 757-6400 • FAX (916) 757-6499

December 8, 2016

Jill Y. Sewell
Office Chief
Program/Project Management & Office Engineer
Construction Contracts Awards
Division of Engineering Services
State of California Department of Transportation (Caltrans)
1727 30th Street, Bidder Exchange, MS 43
Sacramento, CA 95816-8041
Fax (916) 227-6282

Subject: Contract 06-0P5904
Bid Opening: November 30, 2016
Bid Protest of Emmett's Excavation, Inc.

Dear Mrs. Sewell,

Please consider this letter a protest of the bid submitted by Emmett's Excavation, Inc. (EEI) for the above referenced project. EEI's bid is non-responsive because the Disadvantage Business Enterprise (DBE) Commitment form submitted by EEI is inconsistent with the Subcontractor List form.

The DBE form states in part *"...The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontract List (Pub Cont Code § 4100 et seq.)"*.

Pub Cont Code § 4100 et seq. states in part to list each subcontractor to perform work in an amount *"...in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater."*

EEI listed on its DBE Commitment form Cable Links Construction (CLC) to perform bid items 58, 59, & 60. However, EEI failed to list CLC on the Subcontractor List form submitted with its bid. The addition of CLC on the DBE Commitment form is a violation of the subcontractor listing laws.

Based on the above Caltrans should proceed to award the contract to the lowest responsive bidder, Teichert Construction.

EEI submitted a letter to Caltrans dated 12/1/2016 requesting Caltrans to add CLC to EEI's bid after bids had been accepted on 11/30/16. EEI stated in their letter to Caltrans they made an error and did not list on bid day the electrical subcontractor for this project. EEI references Public Contract Code (PCC) Section 4107.5 and 4107(a)(1) as the bases of their claim for seeking preferential treatment in **adding post bid** work to be subcontracted. There is nothing in either PCC Section that allows for this.

PCC Section 4107.5 and 4107(a)(1) simply allows for the **substitution** of a subcontractor by providing a process that requires notification of the awarding authority, and **to both** the subcontractor listed in error **and** the intended subcontractor. In EEI's case there is not an original subcontractor listed to substitute for, and thus these sections **do not** allow for adding CLC to its bid.

The Public Contract Code is clear; a prime contractor may not sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her **original bid** did not designate a subcontractor. Once a bid is submitted it cannot be augmented or changed. Allowing a change after bid is accepted would circumvent the competitive bidding process and provide a material advantage to EEI.

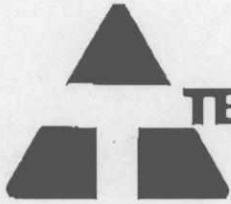
For these reasons, Emmett's Excavation, Inc. bid is non-responsive and award should be made to the lowest responsive bidder, Teichert Construction.

Sincerely,

A. Teichert & Son dba Teichert Construction

A handwritten signature in black ink, appearing to read "Eric Stannard", with a stylized flourish at the end.

Eric Stannard
Director of Public Procurement

**TEICHERT CONSTRUCTION**

400 Sunrise Ave.
Suite 300
Roseville, CA 95661
(916) 757-6400
Fax: (916) 757-6499

FAX COVER SHEET

To: Office Engineer
COMPANY: State of California-Dept. of Transportation
FAX NUMBER: (916) 227-6282
PHONE NUMBER: N/A

FROM: Eric Stannard
Director of Public Procurement

DATE: December 8, 2016
PAGES: 6 including Cover Sheet

RE: Contract No. 06-0P5904
Bids Opened: November 30, 2016